IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

CRP.No. 136 of 2003()

(AGAINST JUDGMENT DATED 13/11/02 PASSED BY THE PRL.SUB COURT N.PARUR IN CMA.9/2001- I.A.NO.1997/2000 IN OS.560/2000 OF THE MUNSIFF'S COURT,ALUVA)

.....

REVN. PETITIONER: (RESPONDENT-RESPONDENT-DEFENDANT):

JOSE, SON OF KOCHUVAREED,
PONTHEMPILLY VEETTIL, CHENGAL KARA,
VADAKKUMBHAGOM VILLAGE.

BY ADV. SRI.T.K.VENUGOPALAN
SRI.SHIBU JOSEPH
SRI.V.DEVAN

RESPONDENTS: (PETITIONERS-PETITIONER-PLAINTIFFS):

---

1. **KUNJI PAULO, SON OF OUSEPH,**
   PONTHEMPILLY VEETTIL, CHENGAL KARA,
   VADAKKUMBHAGOM VILLAGE.

2. **SHAJU, SON OF KUNJI PAULO, PONTHEMPILLY VEETTIL, CHENGAL KARA, VADAKKUMBHAGOM VILLAGE.**

BY ADV. SRI.P.BOSCO PAUL for R1

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.315/2003 IN C.R.P.NO.136/2003

DISMISSED

4/09/2007 **SD/- PIUS C. KURIAKOSE, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

C.R.P. No. 136 OF 2003

Dated this the 4th day of September, 200

O R D E R

Impugned in this Civil Revision Petition under Section 115 is the judgment passed by the Subordinate Judge, North Parur setting aside the order of the learned Munsiff dismissing an application for injunction and granting an injunction against the petitioner from conducting a smoke house in connection with his business in hill produces. The learned Munsiff dismissed the injunction application finding that the petitioner respondent has not made out a prima facie case justifying the grant of an interim order. The learned Subordinate Judge, however, noticed that there was evidence in the form of report submitted by the Commissioner to hold that smoking activity is being conducted by the petitioner by making use of chemicals including Sulphur and that the operation of the smoke house is resulting in emanation of smoke polluted with chemicals which is injurious to the health of the respondents who reside in the immediate neighbourhood.

2. Though very strenuous admissions were addressed before me by the learned counsel for the petitioner, I do not find any jurisdictional infirmity about the judgment of the lower appellate court since the

findings therein are based on materials actually noticed by the court and those findings cannot be said to be wholly unreasonable. However, the submission of the learned counsel that the petitioner's unit is only a small one and that the impugned judgment has been under stay by this court ever since the institution of the CRP and that the smoke house has been functioning on the strength of the stay order, has some appeal.

Under these circumstances, even as I hold that the impugned judgment of the lower appellate court is in order, I direct that the order of stay presently passed will continue till such time as the suit, OS No.560 of 2000 is disposed of by the trial court on condition that the petitioner produces before the trial court within one month from today the licence or NOC issued by the Kanjoor Panchayat in the matter of the smoke house in question and he produces also before that court the consent to operate the unit issued in his favour by the concerned Environmental Engineer of the Kerala State Pollution Control Board. The Munsiff's Court, Alwaye is also directed to expedite the trial of the suit, OS No.560 of 2000 and dispose of the same at the earliest and at any rate within 4 months of receiving copy of this order. It is needless to mention that the learned Munsiff will decide the suit without being influenced by the

judgment of the lower appellate court, by any observations contained in this order and also by his own order dismissing the petition. The suit will be decided on the basis of the evidence which comes on record at trial.

PIUS C. KURIAKOSE, JUDGE

btt